

October 14, 2004

National Highway Traffic Safety Administration
Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, SW
Nassif Bldg., Room PL-401
Washington, D.C. 20590-001

Re: Docket No. NHTSA-2004-17694
Request for Comments
Notice of Proposed Rulemaking: Side Impact Protection:
Side Impact Phase-In Reporting Requirements

Dear Sir or Madam:

The Specialty Equipment Market Association (SEMA) welcomes the opportunity to provide our comments on a revised side impact protection standard. We agree with NHTSA that practical measures can be employed to update the side impact safety standard and increase its safety benefits.

SEMA is an aftermarket trade association representing the \$29 billion specialty automotive industry. SEMA is comprised of approximately 5,700 mostly small businesses nationwide that manufacture, rebuild, distribute and retail parts and accessories for motor vehicles. The products manufactured by our member companies include performance, functional, restoration and styling enhancement equipment for use on passenger cars, trucks, recreational and special interest vehicles. Product categories that may be directly impacted by the revised rule include seating equipment, interior upholstery, sunroofs and running boards. Among our customers are the many U.S. citizens that modify their vehicles for improved performance and utility.

SEMA's comments will focus on three major issues: access to service information, warranty denials, and small business considerations.

Service Information

While the side impact rule applies primarily to the vehicle manufacturer, aftermarket equipment manufacturers and other entities that diagnose, service, repair and upgrade motor vehicles may be directly impacted if their installed products interact with equipment or systems used by vehicle manufacturers to achieve the performance standard. Airbags and airbag sensors are examples of items that have an industry-wide impact.

More and more items of equipment and vehicle systems incorporate electronic sensors or are otherwise tied into the vehicle's electronic programs. While the U.S. Environmental Protection Agency (EPA) requires vehicle manufacturers to share on-board diagnostic system (OBD) information with the service and repair industry, NHTSA has not yet

Specialty Equipment Market Association (SEMA)
1317 F Street, NW; Suite 500; Washington, DC 20004
Telephone: 202/783-6007; Fax: 202/783-6024



issued regulations, guidance or directives requiring a similar sharing of electronic information for items governed by the agency. The side impact protection rule provides such an opportunity.

Air bag sensors are a prime example of the need for the sharing of electronic service information. The current rule covering front and side passenger air bags has caused havoc for manufacturers of aftermarket leather and fabric seating products. These manufacturers or their authorized installers frequently do not have adequate access to electronic information about the seat sensor. Consequently, it may be impossible for the aftermarket manufacturer or installer to reprogram the sensor after the product has been installed. In many instances, the vehicle must return to the dealership for reprogramming.

The side impact protection rule will trigger installation of more sensors and promulgation of more electronic hardware and software. NHTSA has an affirmative responsibility to address the impact of this rule on the aftermarket.

NHTSA's Authority To Mandate Information Sharing

The National Traffic and Motor Vehicle Safety Act provides specific authority to NHTSA to prescribe motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and can be stated in objective terms. Congressional intent also clearly establishes that NHTSA is to create performance standards that ensure an even-playing field for all sectors of the marketplace. The courts have also addressed this issue, making it clear that the standards adopted by NHTSA are to be performance standards, not design standards and that such standards are to apply equally to motor vehicles and motor vehicle equipment. *Chrysler Corp. v Department of Transp.*, 515 F.2d 1053 (6th Cir. 1975).

Within that context, it is appropriate for NHTSA to make sure that electronic data is open and available in such a way so as not to preclude installation, servicing, or repair of legal aftermarket equipment. This means, the aftermarket manufacturers, distributors, dealers, and repair facilities must have sufficient information about the electronic data to be able to service the vehicle and install new or replacement products, and to ensure that the vehicle or vehicle equipment is not taken out of compliance with an applicable Federal motor vehicle safety standard. NHTSA has the authority and affirmative obligation to require such information sharing.

Specifically, SEMA believes it is appropriate to follow the EPA OBD precedent in that any and all electronic data, or any that can be accessed through the available technology, must be made available to the vehicle owner to the extent that such access is available to other parties. Further, SEMA believes it is appropriate that NHTSA consider setting standards for data retrieval communication protocols, connectors and tools, and that such information and tools be made available to the public in a timely and cost-effective manner. Again, the OBD precedent should be applied.

Warranty Denial

Besides access to service information, warranty denial has become another issue in which the aftermarket product manufacturers and the service and repair industry may be unfairly denied business opportunities. To once again reference the example of front and passenger side air bags, many dealerships have received service bulletins from the vehicle manufacturer warning them against the installation of aftermarket seat covers, citing concern that installation may interfere with the front seat airbag sensors.

Service bulletins or other communications that unfairly threaten warranty denial have the same effect as withholding service information: it creates an uneven playing field and denies the consumer the right to make decisions about how they will enhance, repair or maintain their vehicle.

Under the Magnuson-Moss Warranty Act, warranty coverage cannot be denied simply because aftermarket parts are present on the vehicle. Warranty coverage can only be denied if the aftermarket part caused the malfunction or damage for which warranty coverage is sought. The specific language governing illegal denial of warranties is in Title 15 of the U.S. Code, Chapter 50, Section 2302(c). It states:

“No warrantor of a consumer product may condition his written or implied warranty of such product on the consumers using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade or corporate name...” (15 U.S.C. 2302(C)).

Along with requiring information sharing, SEMA recommends that NHTSA issue a regulation or policy statement which states that it is illegal to issue service bulletins or other communications that warn dealers about potential warranty denial based on the mere presence or installation of aftermarket equipment. Such communications would be premature since no warranty problem yet exists. Additionally, such communications could indicate that the independent aftermarket is not being supplied with service information necessary to make their products and services compatible with the vehicle. (With adequate service information, the products should be compatible and thus there would be no event to trigger a warranty denial.) The warnings are also unnecessary since it is already illegal to take the vehicle or an item of equipment out of compliance with a safety standard. There again, the service information may be necessary for the aftermarket to make sure the vehicle/equipment remains in compliance. Nevertheless, the vehicle manufacturer would retain the right to issue a warning once a direct causal relationship has been determined between a warranted item and an aftermarket product.

Regulatory Flexibility Act Analysis

While NHTSA has conducted a Regulatory Flexibility Act analysis [69 F.R. 28015, May 17, 2004, and the accompanying “Preliminary Economic Assessment, FMVSS No. 216, Amending Side Impact Dynamic Test Adding Oblique Pole Test”], the analysis does not consider all of the small businesses potentially impacted by the rule change. As noted above, the revised side impact rule will directly affect a number of small entities including manufacturers and installers of seating equipment, interior upholstery, sunroofs and running boards. Beyond that, there are potentially thousands of small entities that may have the opportunity to diagnose, service, repair and upgrade motor vehicles.

NHTSA’s reg-flex analysis only considers seating system suppliers from the types of businesses identified above. For this category, NHTSA believes that the air bag manufacturers will provide the seat suppliers with the engineering expertise necessary to meet the new requirements.

While it may be possible to work with the air bag manufacturers to design seating equipment, upholstery, sunroofs, running boards and other items of equipment that may effect air bag sensors, the information is of little value if the vehicle’s computer system

needs to be reprogrammed to accommodate the new equipment. The reg-flex analysis does not take into account that the vehicle manufacturers are the source of this information, not the air bag manufacturers. Unless such service information is forthcoming, thousands of small businesses may be directly impacted by the rule change.

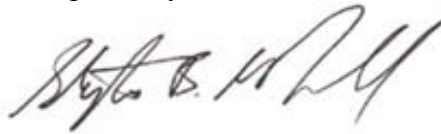
The issue is not hypothetical. To cite one example, one of the fastest growing segments of the aftermarket is satisfying consumer demand for leather or fabric interior panels and seats. While companies that supply leather or fabric seating have tested their product to ensure that the leather or fabric does not adversely impact the air bag seat sensors, there have been numerous instances when the aftermarket installer has been precluded from putting in the leather or fabric because the seat sensor cannot be reprogrammed. There have also been instances when dealerships do not install the aftermarket leather products because they have received warnings from the vehicle manufacturer that the consumer will risk warranty denial.

Conclusion

SEMA supports NHTSA's efforts to revise the side impact protection standard and believes there is an opportunity to craft a rule that will ensure continued consumer access to a vibrant aftermarket. We respectfully urge NHTSA to consider access to service information, warranty denials, and the potential impact of the rule on a myriad of small businesses as it moves forward with the issue.

Thank you for your consideration of our views. Should you require additional information, please call me in SEMA's Office of Government Affairs in Washington, D.C. at (202) 783-6007, ext. 31.

Respectfully submitted,



Stephen B. McDonald
Vice President, Government Affairs
Specialty Equipment Market Association
1317 F Street, NW, Suite 500
Washington, DC 20004
202/783-6007, ext. 31
202/783-6024 – fax
stevem@sema.org